

I also want to note the importance of the amendment which the Senate has adopted to H.R. 672 to overturn the ninth circuit's decision in *La Cienega Music Co. v. ZZ Top*, 53 F.3d 950 (9th Cir. 1995), *cert denied*, 116 S. Ct. 331 (1995). My colleagues will recall that Senator LEAHY and I introduced this legislation in March of this year as a provision of S. 505, the Copyright Term Extension Act of 1997.

In general, *LaCienega* held that distributing a sound recording to the public—by sale, for example—is a “publication” of the music recorded on it under the 1909 Copyright Act. Under the 1909 Act, publication without copyright notice caused loss of copyright protection. Almost all music that was first published on recording did not contain copyright notice, because publishers believed that it was not technically a publication. The Copyright Office also considered these musical compositions to be unpublished. The effect of *La Cienega*, however, is that virtually all music before 1978 that was first distributed to the public on recording has no copyright protection—at least in the ninth circuit.

By contrast, the second circuit in *Rosette v. Rainbo Record Manufacturing Corp.* 546 F.2d 461 (2d Cir. 1975), *aff'd per curiam*, 546 F.2d 461 (2d Cir. 1976) has held the opposite—that public distribution of recordings was not a publication of the music contained on them. As I have noted, *Rosette* comports with the nearly universal understanding of the music and sound recording industries and of the Copyright Office.

Since the Supreme Court has denied cert in *La Cienega*, whether one has copyright in thousands of musical compositions depends on whether the case is brought in the second or ninth circuits. This situation is intolerable. Overturning the *La Cienega* decision will restore national uniformity on this important issue by confirming the wisdom of the custom and usage of the affected industries and of the Copyright Office for nearly 100 years.

In addition to these two important provisions, H.R. 672 will:

First, correct drafting errors in the Satellite Home Viewer Act of 1994, which resulted from the failure to take into account the recent changes made by the Copyright Tribunal Reform Act of 1993, and which mistakenly reversed the rates set by a 1992 Copyright Arbitration Royalty Panel for Satellite carriers;

Second, clarify ambiguities in the Copyright Restoration Act dealing with the restoration of copyright protection for certain works under the 1994 Uruguay Round Agreements Act;

Third, ensure that rates established in 1996 under the Digital Performance Rights in Sound Recordings Act will not lapse in the event that the Copyright Arbitration Royalty Panel does not conclude rate-setting proceedings prior to Dec. 31, 2000.

Fourth, restore definition of “jukebox” and “jukebox operator,” which

were mistakenly omitted when the old jukebox compulsory license was replaced with the current negotiated jukebox license;

Fifth, revise the currently unworkable requirement of a 20-day advanced notice of intent to copy right the fixation of live performances, such as sporting events;

Sixth, clarify administrative issues regarding the operation of the Copyright Arbitration Royalty Panels;

Seventh, provide needed flexibility for the Librarian of Congress in setting the negotiation period for the distribution of digital audio recording technology [DART] royalties; and,

Eighth, make miscellaneous spelling, grammatical, capitalization and other corrections to the Copyright Act.

Mr. President, this is important legislation, and I am pleased the Senate has acted to approved it prior to adjourning this fall. I wish to thank my colleagues and to encourage the House to accept the Senate amendment and to forward H.R. 672 to the President for his signature without delay.

DEPARTMENT OF DEFENSE AUTHORIZATION BILL CONFERENCE REPORT

Mr. JEFFORDS. Mr. President, for the past few days, the Senate has been considering the conference report to accompany the Department of Defense authorization bill for fiscal year 1998. While there are several areas of controversy, I would like to highlight one area that I believe has not been given sufficient consideration: funding for the National Guard.

This bill contains a couple of disturbing provisions, not so much for their immediate impact, but for their long-term consequences. First, the proposal to add a representative for the Guard and Reserves on the Joint Chiefs of Staff, which I strongly support, has been watered down to call for two two-star advisors to the Chairman of the JCS. Mr. President, this is essentially the same role that the head of the National Guard Bureau has today. I do not see this as an enhancement of the Guard's status in the highest circles of decisionmaking. And I'm told that in the Pentagon, two two-stars don't equal a four. I am afraid that the current pattern of decisionmaking is responsible for the shortfall in resources for the National Guard that we see in the legislation before us, and if it is not altered in a significant manner, the National Guard is likely to have greater problems in the future.

The other provision that I would like to draw my colleagues attention to is the cut in Army National Guard personnel endstrength of 5,000. Mr. President, we all understand that over the next few years, endstrengths will come down for all the services. But what this bill does is to pick out one component of the military and require it to make a significant cut without calling on other components to begin their

agreed-upon reductions. In fact, this bill forces reductions in the only part of the U.S. Army to actually meet its endstrength requirements. I am not sure that all my colleagues realize that because the Army National Guard is actually over its required endstrength by about 2,000 people, the legislation will force the layoff of more than 5,000 young men and women who are currently serving their country. Whereas if similar cuts were to come in the active component, the cuts would be implemented in large part by eliminating unfilled positions. This does not seem to me to be the way to maintain a dedicated cadre of military professionals.

Finally, I speak out today because I am concerned that this legislation may be taken as a sign by some as a change in Congress' attitude toward the National Guard. I very strongly believe that the future of the U.S. Armed Forces must include a greater role for the Guard and Reserves, not a diminished one. As defense resources shrink, as the nature of our employment structures change, and as we develop better tools for keeping our weekend warriors up to speed as top quality practitioners of their military arts, we must put more of our faith in that part of the U.S. military that is closest to the people—the National Guard.

For too long, Congress has been seen as the primary bastion of support for the Guard and Reserves—not the Pentagon. An example of this is the administration's request for no new procurement funds for fiscal year 1998 for the Army Guard and Air Guard, out of a total procurement budget request of \$42,883,000,000. This is not only unrealistic—it is dangerous. And until the administration sends up a more balanced request, Congress will have to continue its vigilance on behalf of the Guard. But this is not the way it should be, Mr. President, and I am disappointed that the bill before us today did not take advantage of the opportunity to change this situation.

It is my impression that a great debate continues to rage on the future structure of our military forces. I trust that this bill will not be taken as Congress' comments on that discussion, and that renewed energy will go into finding a better solution to these dilemmas in the coming years.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)